

No. 24-1434

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

IN RE INVESTORS WARRANTY OF AMERICA, LLC
Petitioner.

From the United States District Court for
the District of Maryland
Civil Action 8:20-cv-01502

MOTION FOR EXPEDITED RULING ON
PETITION FOR WRIT OF MANDAMUS

Pursuant to Federal Rule of Appellate Procedure 2 and Fourth Circuit Rule 27(e), Petitioner Investors Warranty of America, LLC (“IWA”) respectfully moves the Court for an expedited ruling on IWA’s Petition for Writ of Mandamus (“Petition”) because the matter is scheduled for trial beginning August 26, 2024, and respondent has moved to disqualify IWA’s trial counsel on the basis of these privileged communications.

IWA filed its Petition on May 13, 2024, asking that the Court grant a writ of mandamus to vacate an order requiring the production of *ex parte* materials and allowing the use of IWA’s privileged information at trial. [ECF-2.] This is the second time that IWA has asked this Court to protect the same privileged information. The Court granted IWA’s first writ of mandamus on February 21, 2024,

vacating a production order directing the release of three privileged communications to Plaintiff Rock Spring Plaza II, LLC (“Plaza). *See In re: Investors Warranty of America, LLC*, Case No. 23-1928. After the Court’s vacatur of the district court’s production order in the first mandamus action, the district court determined that since Plaza could not obtain the actual privileged documents, Plaza could instead obtain (and potentially use at trial) the materials that discuss and quote from the privileged materials: the district court’s memorandum opinion that had accompanied the vacated order and certain other *ex parte* materials. This Petition ensued.

On June 5, 2024, the Court directed Plaza to file a response to the Petition. [ECF-8.] Plaza filed its Response to the Petition on June 17, 2024, and Plaza represented to this Court that it would “consider using the excerpts [of the privileged IWA communications] for the purpose of impeachment” and that “Plaza could not contemplate any possible uses for” the *ex parte* materials. (Plaza’s Resp. at 12¹; *but see id.* at 11-12 (stating that Plaintiff did not argue that the three privileged IWA documents could be used at trial).)

¹ Plaza’s response made a number of factual misstatements, and also made statements inconsistent with its representations and briefings to the district court. (Plaza’s Resp. [ECF-14] at 11-12.) Accordingly, IWA filed a motion for leave to file a reply to Plaza’s Response to, among other things, correct the record regarding Plaza’s prior representations regarding how it intended to use IWA’s privileged information. [ECF-38.]

Yet, on June 24, 2024, Plaza filed a motion to disqualify IWA's Counsel, William Hill, Jr., of Seyfarth Shaw LLP ("Seyfarth"), which is attached hereto as Exhibit A (exhibits omitted). In that motion, Plaza again takes a different position than it did in its Response to this Court and now makes clear that it does not plan to limit its use of IWA's materials only for "impeachment." Rather, Plaza plans to call as a witness another Seyfarth partner who authored one of the privileged documents discussed in both the first and second petitions, and thus hopes to disqualify IWA's trial counsel based on its improper use of privileged communications and privileged testimony. IWA opposed Plaza's motion to disqualify Mr. Hill given the prejudice to IWA. (IWA's opposition is attached hereto as Exhibit B.) However, as it relates to timing, Plaza's Motion to Disqualify creates a need for an expedited ruling from this Court on its Petition in addition to the upcoming trial date.

Accordingly, so that IWA may prepare for the trial scheduled by the district court to begin on August 26, 2024, IWA respectfully requests an expedited ruling.

Dated: July 1, 2024

Respectfully submitted,

/s/Rebecca A. Davis

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CERTIFICATE OF COMPLIANCE

1. This motion complies with the type-volume limitation of Federal Rule of Appellate Procedure 27(d)(2)(A) because this motion contains 998 words, excluding those parts of the motion exempted by Rule 27(a)(2)(B).

2. This motion complies with the typeface and type-style requirements of Federal Rule of Appellate Procedure 27(d)(1)(E) because this motion has been prepared in a proportionally spaced typeface using Microsoft Word for Office 365 in 14-point Times New Roman font.

Dated: July 1, 2024

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CERTIFICATE OF SERVICE

I certify that on this day, a copy of the foregoing motion, including its exhibits, was sent by Federal Express to:

The Honorable Peter Messitte
United States District Court for the District of Maryland
Southern Division
6500 Cherrywood Lane
Greenbelt, MD 20770

On this day, a copy of the foregoing motion, including its exhibits, was served electronically via ECF to all counsel of record

Dated: July 1, 2024

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